Annual Report

2018/2019

CANADIAN CONSTITUTION FOUNDATION

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Foreword

On behalf of the Canadian Constitution Foundation's entire team, I'd like to express our gratitude and thanks to all of the CCF's supporters and friends. We are privileged to be doing this important work and honoured to be thriving at it. For my part, I'm delighted to have stepped into my role as CCF's Executive Director at a truly exciting time for the organization. 2018-19 has been a landmark year for the CCF, and we are firing on all cylinders as we continue to build a portfolio of cases and projects to further the CCF's mission: "to protect the constitutional freedoms of Canadians through education, communication, and litigation." In this letter, I'll identify a few strategic areas of focus that we are currently advancing in.

On **freedom of expression**, CCF continues to be a national leader in advocating for strong rights as guaranteed by s. 2(b) of the *Charter*. In *Strom v. Saskatchewan*, we argued that freedom of expression must protect the rights of Canadians to speak freely about issues of public importance. In *Fleming v. Ontario*, we argued that the police should not be permitted to violate Canadians' right to freedom of expression and quell a peaceful legal protest merely because a third party with an opposing view has threatened to respond to the protest with violence.

And in the CCF's newest case, we are challenging the constitutionality of newly amended provisions of the ***Canada Elections Act*** which limit individuals and groups in their political expression. The legislation puts a powerful weapon in the hands of the Commissioner of Canada Elections, who can investigate and prosecute violations of the Act, at anytime. This should worry anyone who cares about keeping our democracy open and inclusive as it threatens speech when it matters most —during an election.

On the issue of **healthcare freedom**, our *Cambie Surgeries v. British Columbia* case is in its final stages, with closing arguments to proceed this fall. A victory for the CCF in this case would help restore healthcare choice to patients in British Columbia who are waiting for medical treatment. This is the largest public interest constitutional challenge in Canadian history, and its outcome will truly impact every Canadian.

The government has engaged in extraordinary tactics of procedural delay in the case. In August 2017, the CCF filed a freedom of information request asking how much taxpayer money the BC government had spent opposing patients' right to timely healthcare in the *Cambie* litigation. We are currently appealing a BC Supreme Court decision which accepted the government's argument that such disclosure might threaten solicitor-client privilege, even though all that is sought is a plain dollar amount.

Finally, the CCF'S Runnymede Society has entered an exciting new era of leadership under the outstanding scholar and lawyer Mark Mancini, who comes to us after completing his LL.M. at the University of Chicago. Runnymede now boasts chapters on nearly every law school campus across the country. In 2018-19, it hosted more than fifty judicial speeches, debates, and panels, ensuring that the spirit of debate and the marketplace of ideas continues to thrive in the Canadian legal academy. As we kick off the 2019 academic year, we are announcing the Runnymede Fellows Program, as well as publishing a major scholarly edition, 'Attacks on the Rule of Law from Within'.

Looking ahead to the next year, we face new challenges including:

- The 2019 federal election, a new government and no doubt a new batch of legislation that the CCF will scrutinize for its constitutionality;
- Continuing to promote the spread of liberty-centred legal ideas amongst the legal academy, profession and bench; &
- The inevitable sequence of appeals to the BC Court of Appeal and Supreme Court of Canada, regardless of the trial outcome in *Cambie Surgeries*.

We feel well-equipped to excel under these challenges, and for that we couldn't be more thankful to our donors and friends. The rest of this report details our recent activities. We hope our work merits your ongoing support, and if you haven't already joined us, we hope you'll consider doing so.

Sincerely,

Joanna Baron
Executive Director
Canadian Constitution Foundation

CANADIAN CONSTITUTION FOUNDATION

The Canadian Constitution Foundation (CCF) protects the constitutional freedoms of Canadians through education, communication and litigation.

The CCF is grateful for the help and support given by our donors, volunteers, clients, board and advisory board members, and staff.

Our mandate includes:

Individual Freedoms
(Section 2 of the Charter of Rights and Freedoms):

- freedom of association
- freedom of peaceful assembly
- freedom of conscience and religion
- freedom of expression, belief and opinion

Economic Liberty
(Section 7 of the Charter of Rights and Freedoms):

The right to earn a living free from arbitrary interference from government; the basic human right to own and enjoy property.

Equal Opportunity
(Section 15 of the Charter of Rights and Freedoms):
The right to equality before the law for all individuals.

Litigation

In the last year, we launched several new cases and succeeded in furthering the cause of freedom in Canada's courtrooms and in Canadian public opinion.

Free Expression: Elections Censorship Law

In September 2019, the CCF announced it was challenging the constitutionality of section 91 of the *Canada Elections Act*. These provisions, which were recently amended, make it an offence to attempt to influence an election by making or publishing certain types of "false" statements about political candidates and other public figures during the election period. The prohibition leaves important words like "false", "public figure", and "associated with" undefined. The result is that the law casts an exceedingly broad net and could be used to shut down all manner of political speech that is protected by the *Charter*. This chilling effect will lead to a muted social and political discourse and, in turn, serve only to undermine the integrity and effectiveness of the democratic election process. Censoring and punishing free speech is not a constitutionally acceptable outcome in a free and democratic society.

Free Expression: In support of Carolyn Strom

Ms. Strom is a nurse who was brought before a professional disciplinary committee and found to have engaged in professional misconduct for having posted comments critical of the end-of-life care that her grandfather had received at a care facility in Macklin, Saskatchewan. The professional regulator for nurses in Saskatchewan operates at arm's length from the Government of Saskatchewan and is empowered in this role by statute. After a decision by the Saskatchewan Court of Queen's Bench held that it had to show deference to the decision of the disciplinary committee, Ms. Strom appealed to the Saskatchewan Court of Appeal. No Canadian should ever face these sorts of financial and professional pressures for speaking out honestly on behalf of an ailing loved one, especially since the *Charter* guarantees freedom of expression. The CCF made it's oral argument in support of Ms. Strom and free expression in September of 2019.

Image by John Nakamura. Modified and used under CC 2.0.

Free Expression: Fleming v. Ontario

In 2019, the CCF also intervened at the Supreme Court of Canada to defend the right to protest, and in particular, the right of all Canadians to express controversial views regarding social issues in a peaceful manner in the public square. Randy Fleming was violently arrested by the Ontario Provincial Police in 2009 on his way to a counter-protest against the Aboriginal occupation of the Douglas Creek Estates in Caledonia, Ontario. Freedom of expression exists in order to protect the expression of unpopular opinions. And while protected expression may be controversial and at times spark hostility in others, if the police do have the power to arrest speakers merely to prevent a possible future breach of the peace by offended listeners, the police are effectively granting a "heckler's veto." We are currently waiting on the Supreme Court's judgement.

Toronto municipal election case

The CCF intervened in *Toronto (City) v. Ontario (Attorney General)* in June of 2019. This case was a constitutional challenge by the City of Toronto against the Government of Ontario after the latter recently cut the size of the Toronto City Council. The CCF argued that the Constitution's framers chose to protect participation in federal and provincial, but not municipal, elections in s. 3 of the *Charter*, and that this choice must inform the proper interpretation of s. 2(b). One *Charter* guarantee cannot legitimately be used as a vehicle to cloak in constitutional protection that which another *Charter* guarantee has expressly excluded. Courts must be attentive to the internal limits of *Charter* rights, and not simply rely on the limitations clause (s. 1) to leave it up to judges to decide subjectively, in every case, whether the government has overstepped. Regardless of one's personal position over the policy decision, the Government of Ontario was within its constitutional parameters when it made its decision. In September of 2019, the Ontario Court of Appeal came to the same conclusion, relying on many of the CCF's arguments in arriving to its decision.

Interprovincial Trade: Steam Whistle

On December 14, 2018, the Alberta Court of Appeal granted the Canadian Constitution Foundation leave to intervene in the appeal of the *Steam Whistle v. AGLC* decision, in which two out-of-province beer companies successfully challenged unconstitutional discrimination by Alberta against their products. This is the first appellate court case in Canada interpreting the SCC's *Comeau* decision, so it is important that it be given a liberal construction, in keeping with the original constitutional vision of trade within Canada. We are currently waiting on the Alberta Court of Appeal's judgement.

Image by Ken Lund. Modified and used under CC 2.0.

Healthcare Freedom

The CCF continues to support the patient plaintiffs and Cambie Surgery Centre in its fight to have the rights of patients recognized by the Government of British Columbia. The plaintiffs are challenging parts of BC's *Medicare Protection Act* that prevents patients from accessing healthcare when they are left suffering on waiting lists. These restrictions on healthcare result in patients needlessly suffering as their conditions worsen while doctors and operating rooms are left idle and underutilized.

The final phases of this trial have been unfolding in 2019. After years of delays and distractions by the Crown's lawyers, the patient plaintiffs had their evidence and arguments presented in court. We expect the final arguments to be heard in the fall of 2019 and the judge to begin to deliberate in December.

Concurrent to this trial, the CCF proceeded with our efforts to find out how much money the Government of BC had spent so far fighting against patient rights. This process moved to the courts in 2019 as the government appealed a 2018 decision by the BC Office of the Information and Privacy Commissioner that ordered the government to reveal their total cost of litigation incurred since 2009. Unfortunately, the BC Supreme Court permitted the province to keep this total amount secret in a decision on July 12, 2019. We will be applying to appeal this decision.

YOUR HEALTH CAN'T WAIT

The CCF hosts a fundraising and informational website at **yourhealthcantwait.ca** for this important case. Stay tuned to the news section for more updates on this case's progress.

RUNNYMEDE SOCIETY

Through on-campus debates and discussion, the Runnymede Society ensures that free speech and intellectual diversity remain an active part of Canadian law school life. The Runnymede Society's success has grown year after year with Society chapters hosting **50+** events in the last year.

The Runnymede Society provides outstanding support and opportunities for intellectual enrichment, networking, and professional development. This includes providing members opportunities to meet professors, practitioners, and judges supportive of our mission.

In Spring, 2019, Mark Mancini succeeded Joanna Baron as national director of the Runnymede Society. Mark was a founding Runnymede Society chapter president at the University of New Brunswick and has distinguished himself as an eloquent and prominent young legal academic and public law scholar. Mark recently finished his LL.M. at the University of Chicago. He will build on the positive momentum Runnymede has created, with a national conference that continues to grow in size and influence, active chapters at almost every law school in the country, a busy slate of academic programming, and a mandate to shift the legal culture in Canada towards liberty.

Some of the standout events this past year include:

- **Freedom of conscience: the supremacy of that which is highest and best in man**: A discussion with Professor Leonid Sirota, (AUT Law School, Double Aspect Blog). September 10, University of Saskatchewan College of Law.
- **Due Process in the #MeToo Era**: A discussion with Jon Kay (editor, Quillette magazine) and Professor Jennifer Koshan (University of Calgary). September 18, University of Alberta Faculty of Law.
- **The Aboriginal Duty to Consult and *Mikisew Cree***: A discussion with Professor Dwight Newman (University of Saskatchewan) and Professor Naomi Metallic (Dalhousie University). February 6, Dalhousie University Schulich School of Law.

Law students with Judge Janice Rogers Brown, former Circuit Judge of the United States Court of Appeals for the District of Columbia.

Student Leadership Conference

The Runnymede Society hosted its Student Leadership Conference in Quebec on July 26-28, 2019. The weekend featured a mix of socializing, discussion of perennial and topical legal issues, remarks from leading jurists, and hands-on training to continue chapters of the Runnymede Society at law schools across the country in Fall 2019.

This year we hosted:

- **Professor Josh Kleinfeld** (Northwestern University)
- **Hon. Justice Marc Nadon** (Federal Court of Appeal)
- **Judge Janice Rogers Brown**, ret'd (D.C. Circuit)

Attacks on the Rule of Law

"Attacks on the Rule of Law From Within" is a volume, co-edited by Joanna Baron and Maxime St-Hilaire, which contains pertinent essays on the Rule of Law and its status within the legal system. The volume features topical papers from scholars like Dwight Newman, Leonid Sirota, Ryan Alford, Malcolm Lavoie, Michael Bookman, and Brian Bird.

This volume is available for purchase from LexisNexis

LAW & FREEDOM
RUNNYMEDE SOCIETY CONFERENCE 2019

In 2019, our annual law conference expanded to a larger venue by taking place in The Great Hall of Hart House at the University of Toronto.

Our Friday keynote presentation this year was a special conversation between the **Hon. David Stratas** and lawyer **Asher Honickman** on the interpretation of law by judges. On Saturday, we hosted Claire Lehmann, founding editor of Quillette. The event also featured a discussion of the Presumption of Innocence in the #MeToo era as well as discussions on religious freedom and *Charter* values. This year featured panelists such as **Andre Coyne**, the **Hon. Justice Lorne Sossin** and **Prof. Carissima Mathen**.

Recordings of these panels are freely available on the Runnymede Society's YouTube channel.

ONE COUNTRY ONE MARKET

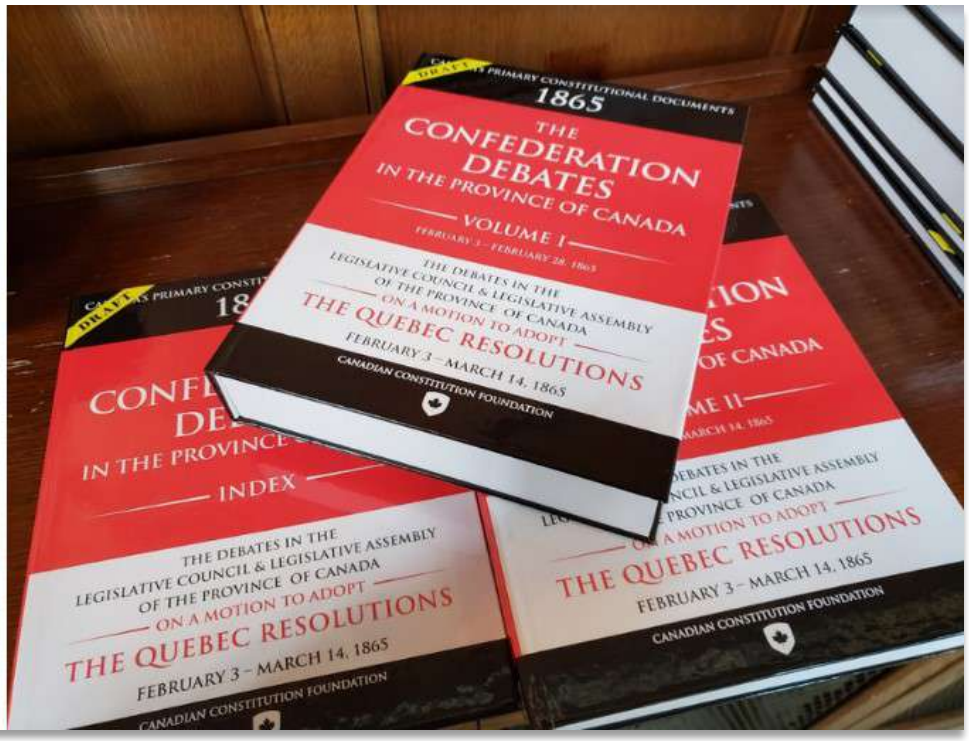
With our partners the Montreal Economic Institute and the Atlantic Institute for Market Studies, our One Country, One Market campaign in support of a single economic union in Canada continued with more success in this last year.

Following the May 2018 decision for our groundbreaking *Comeau* case, we hosted a national conference in November 2018 to discuss the future of interprovincial trade in Canada. This conference brought together many of Canada's top economists, constitutional scholars, industry representatives, and politicians in our country's capital. Speakers included the **Hon. Dominic LeBlanc** (Federal Minister of Intergovernmental and Northern Affairs and Internal Trade), **Ryan Greer** (Canadian Chamber of Commerce), and **Prof. Malcolm Lavoie** (University of Alberta Faculty of Law).

Our work to ensure the vision of our country's constitutional framers will continue into the next year. Our country's founders intended for Canada to be one country and one market. The CCF remains committed to keeping Canadian governments accountable to their own trade agreements and to the Canadian constitution.

The Primary Documents project is the most complete word-searchable electronic repository of documents relating to the Constitution. Aside from our printed publications and the website, the team behind this project will soon be launching a mobile app as well.

This year, the Primary Documents team is proud to announce that we uncovered previously unpublished drafts of the Quebec Resolutions. These are available on the website and will soon be available in book format for our book series Canada's Primary Constitutional Documents. The republication of the 1865 Confederation Debates will soon be expanded to include the year 1866. Hundred of new footnotes and an expanded index have been recently added to help the reader better navigate these founding debates.



Communication

- In 2018/2019, the Canadian Constitution Foundation was directly named in over **800 articles** online and in print in Canadian and American media. As in previous years, many of these mentions were not just articles about CCF cases and projects, but also included statements made by CCF staff discussing important constitutional and legal issues in Canada.
- The CCF achieved its previous goal of beginning 2019 with over 10,000 followers on Facebook. Our page saw a **23%** increase in followers over last year. The CCF continues to have more Facebook followers than any other Canadian civil liberties and/or legal charity organization.
- The CCF had over **130,000** video views in our last fiscal year, almost doubling the views of the previous fiscal year.
- Interprovincial trade remained an important issue in Canada, in large part due to our *Comeau* case and the work the CCF has done with its partners to keep the issue at the forefront of national policy discussions. Interprovincial trade barriers were discussed in over **1,600** articles in print and online by Canadian news outlets and trade magazines in the last year. More than half of these articles directly mentioned the *Comeau* case.
- At least **500 articles** directly mentioned the *Cambie* case in print and online articles discussing healthcare and health policy in Canada in 2018/2019.

Audited Financials

Revenue	
Contributions and grants	$1,097,093
Restricted contributions	$3,956,884
Other revenue	$14,993
Interest	$8,111
Total	$5,077,081

Expenses	
Project activities	$3,959,917
Staff salaries	$350,946
Office and administration	$224,965
Travel and fundraising	$33,665
Amortization and realized loss	$22,840
Total	$4,592,333

CANADIAN CONSTITUTION FOUNDATION

Contact us

The Canadian Constitution Foundation (CCF) is a registered charity, independent and non-partisan. We defend the constitutional rights and freedoms of Canadians in the courts of law and public opinion.

By phone or email:

(Toll Free) 1.888.695.9105 — info@theccf.ca

By mail:

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Calgary, AB T2H 2K1

Charitable Number: 86617 6654 RR0001
The CCF is also a 501(c)(3) public charity in the U.S.

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